

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

CBRE, INC.

and

Case 21-CA-182368

STEVE THOMA

NOTICE TO SHOW CAUSE¹

On November 24, 2017, Administrative Law Judge John T. Giannopoulos issued the attached decision, finding that the Respondent violated Section 8(a)(1) of the National Labor Relations Act by maintaining an arbitration agreement that employees reasonably would believe bars or restricts them from filing unfair labor practice charges with the Board.² The Respondent filed exceptions and a supporting brief. The General Counsel filed an answering brief and the Respondent filed a reply brief.

At the time of the administrative law judge’s decision, the issue whether maintenance of a policy that did not expressly restrict employee access to the Board violated Section 8(a)(1) on the basis that employees would reasonably believe it did would be resolved based on the prong of the analytical framework set forth in *Lutheran Heritage Village-Livonia*, 343 NLRB 646 (2004), that held an employer’s maintenance of a facially neutral work rule would be unlawful “if employees would reasonably construe the language to prohibit Section 7 activity.” *Id.* at 647. Recently, the Board overruled the *Lutheran Heritage* “reasonably construe” test and announced a

¹ Member Emanuel is recused and has taken no part in the consideration of this case.

² On July 10, 2018, in light of *Epic Systems Corp. v. Lewis*, 584 U.S. ___, 138 S. Ct. 1612 (2018), the Acting Regional Director for Region 31 dismissed the complaint allegation that the Respondent violated Section 8(a)(1) by maintaining and enforcing an arbitration agreement that requires employees, as a condition of employment, to waive their rights to pursue class or collective actions involving employment-related claims in all forums, whether arbitral or judicial.

new standard that applies retroactively to all pending cases. *The Boeing Co.*, 365 NLRB No. 154 at slip op. 14-17 (2017).

Accordingly, the Board hereby issues the following notice to show cause why this proceeding should not be remanded to the judge for further proceedings in light of *Boeing*, including, if necessary, the filing of statements, reopening the record, and issuance of a supplemental decision.

NOTICE IS GIVEN that any party seeking to show cause why this case should not be remanded to the administrative law judge must do so in writing, filed with the Board in Washington, D.C., on or before December 31, 2018 (with affidavit of service on the parties to this proceeding). Any briefs or statements in support of the motion shall be filed on the same date.

Dated, Washington, D.C., December 17, 2018.

By direction of the Board:

Roxanne Rothschild
Acting Executive Secretary